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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,976	04/18/2001	David W. Conrad	00RE098	9060

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EXAMINER

SICONOLFI, ROBERT

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/836,976

Applicant(s)

CONRAD ET AL.

Examiner

Robert A. Siconolfi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. Amendment filed on 6/3/03 has been received.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 27 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by McCarthy (U. S. Patent no. 4,181,201).

Means for pulling 24, means for providing a tilting action 88, means for rotating 92

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall et al (U. S. Patent no. 5,685,398) in view of McCarthy (U. S. Patent no. 4,181,201).

Marshall discloses: motor 34, field cup 82, armature plate 42, stationary plate 64, friction disk 66, compression spring 50,60, lever assembly 310 (lever 312,314) with first and second pivot points 316,318

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Marshall does not disclose a cam means to actuate the lever device. McCarthy teaches a cam means in combination with a lever means to disengage a motor brake (see figures 1-3 handle 92, cam 88, lever 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a cam means as taught by McCarthy in the brake of Marshall et al in order to provide a good mechanical advantage in a compact space. The handle of Marshall has a mechanical advantage due to its length. The longer it is the more advantage it has. The use of a cam would eliminate the need for a large handle sticking straight up.

Regarding claims 4,5,14 and 15, the device of Marshall does not disclose the tilting of the lever in the range of 1-10 degrees. The specific angle used to achieve separation of the armature plate and the friction disk is a design choice and therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claims 9,10,19,20, the cam of McCarthy does not specifically disclose the side angle. The specific angle used is a design choice and therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made. To support the fact that it is merely a design choice the examiner notes that the applicant admits that any angle or no angle at all may be used in the specification (page 11 lines 25-27).

Response to Arguments

Applicant's arguments filed 6/3/03 have been fully considered but they are not persuasive. Applicant states that Marshall et al teaches away from having a high mechanical advantage in a compact space. Examiner has admitted this position and

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that is why the examiner has made a 103 rejection instead of a 102 rejection in this and previous actions. Therefore, the argument is irrelevant. Furthermore, applicant admits that McCarthy teaches having a high mechanical advantage in a compact space.

Applicant argues that since McCarthy does not teach using an increasing larger lever to have a high mechanical advantage, it can not be combined with Marshall et al. This is a circular argument. A 103 rejection is made to introduce a different element that is not present in the original reference. But the applicant states that because the secondary reference has the different element that which is intended to be introduced by the examiner for the combination, the combination can not be made.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant also claims that McCarthy does not disclose a cam but rather a "cam-engaging latch arm". While McCarthy does use this term, it is clear that the "cam-engaging latch arm" is structurally similar to the applicant's cam. Merely arguing that reference uses a different term for the same part does not define around the prior art.

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Siconolfi whose telephone number is 703-872-9326. The examiner can normally be reached on M-F 10 am-3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703) 308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9327 for regular communications and (703) 305-7687 for After Final communications.

Robert A. Siconolfi
Examiner
Art Unit 3683

RS
August 3, 2003

Robert A. Siconolfi 8/3/03
ROBERT A. SICONOLFI
PATENT EXAMINER